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P-3906-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: DONALD C. JOHNSON
JEFFREY SPILFOGEL #7

FOR: A SEAMLESS BRASSIERE SHOULDER STRAP

SERIAL NO.: 09/780,320

FILED: February 12, 2001

EXAMINER: John Calvert, Supervisory Patent Examiner, Technology Center 3700

Hon. Commissioner of Patents
and Trademarks
Washington, DC 20231

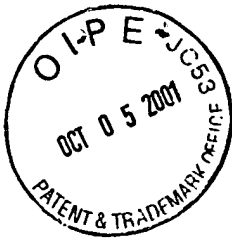
Sir:

This is in reply to the Advisory Action of 09/24/01 refusing entry of an amendment of August 13, 2001, of changes to claim 1 intended to overcome a rejection of said claim under 35 U.S.C. 112, second paragraph.

This is a request for reconsideration of the refusal and is submitted pursuant to 37 CFR 1.181(c).

The basis for the request is that the rejection under 35 U.S.C. 112, second paragraph, was made for the first time in the Office Action of August 13, 2001 and applicant's response thereto, which consisted of the changes made to claim 1, should therefore be made of record as matter of right.

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More particularly, in a first Office Action of 05/25/01 claim 1 was rejected under 35 U.S.C. 112, second paragraph, as follows:

The term "preliminary" found in lines 4, 8 and 11 is awkward and confusing. The term "fibers construction" is grammatically incorrect should be changed to "thermoplastic fibrous material."

Apart from the above, claim 1 was not stated to be rejectionable under 35 U.S.C. 112, second paragraph. The reply of 07/03/01 addressed the rejection and, in fact, in the Office Action of 08/06/01 it was stated "applicant's amendment is found to overcome the claim objection [under 35 U.S.C. 112, second paragraph] set forth in the last Office Action [of 05/25/01]."

In the last Office Action of 08/06/01 preceding the Advisory Action of 09/24/01, however, the Examiner rejected, on new grounds, claim 1 under 35 U.S.C. 112, second paragraph, as follows:

The claim as presented is confusing. The preamble is directed to a seamless shoulder strap which is defined by three unfinished layers superimposed on each other. Further, the claim requires the cutting of these layers to form a smooth edge seam. Is Applicant claiming the method of forming the strap, the unfinished strap or the finished strap. As amended the claim is difficult to understand since all three aspects are presented. Clearly, the unfinished product is different from the finished product and the finished product can be produced by different methods than directed in the claims. The claim lacks clear scope so as to ascertain the metes and bounds of the patent protection desired.

In a Reply of August 13, 2001, applicant amended claim 1 to cure the new objection to claim 1 under 35 U.S.C. 112, second paragraph, and claim 1 as thusly amended should be made of record so that it is the claim to be considered on appeal.

Since an appeal must be filed on or before 11/06/01, and prior thereto a Petition to the Commissioner filed pursuant to 37 C.F.R. 1.181(a)(3), a prompt response from the Examiner to this request is respectfully requested.

Respectfully,

MYRON AMER, P.C.
Attorney for Applicant

By: Myron Amer
Myron Amer
Reg. No. 18,650

114 Old Country Road
Suite 310
Mineola, NY 11501
(516) 742-5290

Dated: October 3, 2001

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